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09/610,510	07/06/2000	Steven A. Roth	ROTH #12	5589

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EXAMINER

WEINHOLD, INGRID M

ART UNIT	PAPER NUMBER
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3632

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 7

Application Number: 09/610,510
Filing Date: July 06, 2000
Appellant(s): ROTH, STEVEN A.

RECEIVED

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GROUP 3600

Thomas R. Lampe
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/1/02.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 10-18 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

Appellant's admitted prior art in Figures 1-2 of application No. 09/610510

3,318,561	Finke et al.	5-9-1967
3,713,613	Searls	1-30-1973

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-11, 13-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited prior art by appellant in Figure 2 in view of Fink et al. (3,318,561). The prior art shown by the applicant in Figure 2, shows a hanger rod (10) for supporting one or more components of a building from a building structure. A clamp (16) having a first straight first clamp segment and a straight second clamp spaced from the first clamp segment and parallel thereto, each of the first clamp segment and second clamp segment being double-ended and threaded over at least a portion of the length thereof, the clamp also includes a third clamp segment integral with and extending between the ends of the first clamp segment and the second clamp segment.

A plate (18) is connected to the clamp and has spaced openings in which the ends of the first clamp segment and the second clamp segment remote from the third clamp segment project through the spaced openings. The first clamp segment and the second clamp segment are disposed on opposite sides of the hanger rod and the third clamp segment and the plate (18) are disposed on opposed sides of the hanger rod (10). Nuts (20) threadedly engage with the ends of the first clamp segment and the second clamp segment, which project through the spaced openings, urging the plate (18) toward the third clamp segment. An elongated stiffener member (14), or a channel with a rectangular shaped outer peripheral, is surrounded by the connected plate (18) and clamp (16) and is disposed between the plate and the third clamp segment with the hanger rod (10) extending parallel to the elongated stiffener member (14) and engaged by the elongated stiffener member. The elongated stiffener member (14) cooperates with the clamp (16) to maintain the hanger rod (10) in a predetermined position relative to the elongated stiffener member (14) and the clamp (16), wherein the hanger rod (10) is in engagement with the elongated stiffener member (14) and the clamp (16). The third segment is non-orthogonally disposed relative to the first clamp segment and the second clamp segment and is cooperable with the elongated stiffener member to continuously exert lateral forces on the hanger rod (10) continuously urging the hanger rod to the predetermined position due to clamping engagement of the hanger rod between the elongated stiffener and the third clamp segment. The plate (18) is in contact with the elongated stiffener member at a location on the elongated stiffener member spaced from the hanger rod (10) and urging the elongated stiffener member

toward the hanger rod and the third clamp segment. The prior art shown by the appellant in Figure 2, however, does not show the third clamp segment with a straight portion. Finke et al. shows a clamp (21) with parallel first and second segments (19, 20) and a third segment with at least a portion being straight and non-orthogonally disposed relative to the first clamp segment and the second clamp segment. The first straight portion extends from and forms an obtuse angle with the first clamp segment and the second clamp segment extends from and forms an obtuse angle with the second clamp segment. The first and second straight portions of the third clamp segment form an obtuse angle therebetween. The first and second straight portions exert generally opposed lateral forces on the hanger rod continuously urging the hanger rod to a location of interconnection between the first straight portion and the second straight portion. The first and second straight portions connect at a location substantially midway between the first clamp segment and the second clamp segment. The shape of the third clamp segment though can be easily changed to have the two straight portions connect at a location closer to the first or second clamp. There are many clamps that are well known and have different shapes to accommodate different size structures. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a straight portion by Finke et al. on the third clamp segment by the prior art shown by the appellant in Figure 2 in order to account for different size and shape structures that were to be held in place. The further alternate limitation of the elongated stiffener member being circular shaped is well known in the art and would be obvious as Finke et al. shows a circular structure (65) being held in the

clamp (21). Since various shaped clamps are being used to accommodate for various shaped and sized structures, it would be obvious to one of ordinary skill in the art at the time the invention was made to have the channel available in different shapes such as circular.

Claims 12 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited prior art by appellant in Figure 2 in view of Fink et al. (3,318,561) and further in view of Searls (3,713,613). There are many clamps that are well known and have different shapes to accommodate different size structures. Changing the shape of the third clamp segment is obvious in order to accommodate for different size and shape structures that are to be held in place. Searls shows a clamp (32) wherein the third clamp segment is substantially straight along the entire length thereof and forms an obtuse angle with the first clamp segment (32') and an acute angle with the second clamp segment (32''). This shape causes the predetermined position to be located at the corner with the acute angle. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have had the third clamp segment by the prior art cited by the appellant in view of Finke et al. be substantially straight such as in Searls in order to accommodate for different size and shape structures to be held in place.

(11) *Response to Argument*

In regards to the appellants argument that the admitted prior art illustrated in Figures 1 and 2 has movement of the plate restricted due to the curved character of the third clamp segment and that the arrangement in Figures 1 and 2 cannot function in the same manner as the applicant's invention:

Regardless of the shape of the third clamp segment, the plate is always going to have restricted movement. In one direction towards the threaded ends of the clamp, the plate can only move as far as the length of the first and second clamp segments minus the distance needed to accommodate the nuts. In the direction towards the third clamp segment, the plate can only move as far as the end of the straight first and second clamp segments. Since the third clamp segment changes direction from that of the first and second clamp segments, whether it angles sharply to form an acute or obtuse angle, or whether it curves smoothly to form an arc, the plate would still not be able to move farther than that point. So the size of the hanger rod or stiffener used is dependant on the size of the clamp itself. The clamp functions in the same manner regardless of the shape of the third member. A force is still being applied to the stiffener and hanger rod, which in turn push against the third clamp member to keep the hanger rod in position.

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In regards to the appellant's argument that the references Finke et al. and Searls do not show the combination of using the clamp with a hanger rod and stiffener member and that they are in different fields than that of the appellant's invention:

The base reference being used is the admitted prior art by the appellant shown in Figures 1 and 2, which shows the clamp being used in combination with the hanger rod and stiffener member. The references of Finke et al. and Searls are merely being used to show that the shape of the third clamp member can be a variety of different shapes. As the examiner is using a combination of the admitted prior art with each of the references, the references cannot be attacked in a piecemeal analysis but should be reviewed in the combination set forth by the examiner. The field that the clamp is used in is intended use and not relevant since the structure is the same and in all the references used they are clamps that are capable of performing the same function as that of the appellant's invention.


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For the above reasons, it is believed that the rejections should be sustained, and
affirmance thereof is requested.

Respectfully submitted,

Ingrid Weinhold (I.M.W.)
January 10, 2003

IMW


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